

# TOWN OF LAUDERDALE-BY-THE-SEA

## BOARD OF ADJUSTMENT Minutes

### *Town Commission Meeting Room*

*Wednesday, August 20th, 2008 at 11:00 A.M.*

#### I. CALL TO ORDER

Chairman Thomas Carr called the meeting to order at 11:00 a.m. Members present were Chairman Thomas Carr, Vice Chair Joseph Couriel, and George Crossman. Also present were Town Attorney Daniel Abbott, Development Services Acting Director Jeff Bowman, Code Compliance Officer Kami Parker, and Board Secretary Colleen Tyrrell.

#### II. PLEDGE OF ALLEGIANCE TO THE FLAG

The Pledge of Allegiance was recited.

#### III. SWEARING IN OF NEW BOARD MEMBERS

There were no new Board Members present to be sworn in.

#### IV. APPROVAL OF MINUTES

Regular Meeting – June 18, 2008

The Board had no revisions to the minutes of June 18, 2008. All voted in favor to approve the June 18, 2008 minutes.

#### V. NEW BUSINESS

- A. Project: To enclose an existing legally nonconforming swimming pool.  
Applicant: El Mar Place Developers LLC, Property Owner, and Representative Peter Debs  
Location: 4329 El Mar Drive  
Request: Description of Variance request: **The property owners are seeking a Variance from the provision of the Ordinance 2008-03; Section 30-313(4) to allow a fence to be constructed within 25 feet of the front property line (5 feet encroachment) to meet Section 30-313(29) requirements, to enclose the existing legally nonconforming swimming pool.**

This Agenda item was heard later in the hearing.

- B. Project: To enclose an existing legally nonconforming swimming pool.  
Applicant: James Silverstone & Peggy Mohler  
Location: 278 Miramar Avenue  
Request: Description of Variance request: **The property owners are seeking a Variance from the provision of the Section 30-313(4); Ordinance 2008-03 to allow a fence to be constructed within 25 feet of the front property line and within 10 feet of the public right-of-way to meet Section 30-313(29) requirements, to enclose the existing legally nonconforming Jacuzzi**

**(swimming pool, spa), which is located within the front yard, and a Variance from the provision of the Section 30-313(29) requirements, to allow the required swimming pool enclosure (the fence) to be constructed 4 feet in height rather than 5 feet in height as required by Code.**

Chairman Carr asked Mr. Silverstone to explain his variance request.

Mr. James Silverstone advised that the pool was built in the year 2000 by code; however, the code at that time did not require a fence enclosure for the pool. Since that time, there was an Ordinance that was approved that required a fence around the pool. Mr. Silverstone said that he was now required to enclose the pool in the front setback and needed a variance.

Chairman Carr said that Mr. Silverstone was required to be 25 feet from the property line and 10 feet within the public right-of-way.

Mr. Silverstone said there was an existing hedge that was on the property line and that the fence would be placed within the hedge line. Mr. Silverstone said it was his intent to keep the flavor of the neighborhood the same so that the fence would not be imposing and that was why they were requesting that the fence be 4 feet in lieu of 5 feet. Mr. Silverstone explained that the Town Code requires a 5 to 6 foot fence but Broward County Code requires a 4 foot fence around any body of water. That is why they decided to request a 4 foot fence in order to minimize the impact of a fence and put the fence in the bushes.

Chairman Carr remarked that Mr. Silverstone's house had a Eureka Palm hedge in the front that screened in that whole area and asked Mr. Silverstone if he was going to place the fence in front of the hedge or behind them.

Mr. Silverstone said that they would like to put the fence inside the palm hedge. Mr. Silverstone said that there was also a dense area of trees and it would not be a straight fence. The fence would be going around the inside of the bushes so the fence would not interfere with the root system. Mr. Silverstone said that it was already very difficult for children or anyone to go over the hedge to gain access to the pool area. Mr. Silverstone said that on the west side of the house there was a small opening at the garage and they had placed temporary fencing until the variance was obtained. Mr. Silverstone indicated that they would like to put the gate where the opening is at the garage and hopefully the gate would be the only thing visible from the street.

Chairman Carr clarified that the gate would be on the east side of the driveway to the edge of the structure and that would close off the patio area.

Chairman Carr reminded Mr. Silverstone that the fence had to have an opening for the wind to blow through.

Mr. Silverstone said that they were looking at various types of fencing that met Broward County Code and the fence would have the spacing for the wind to go through. Mr. Silverstone said that on the east side of the property they would like to put a 4 foot chain linked fence through the bushes so you would not be able to see it and in the front they would put a wooden fence that would be more esthetically pleasing and they would continue a plastic fence along the parking area.

Chairman Carr stated that the applicant was basically securing the Eureka palm hedge that had been there for years and asked the Board for further comments.

Mr. Couriel referred to the code section 30-313(29) and asked the town attorney what the interpretation of unauthorized access meant because the word unauthorized seemed very restrictive and it seemed to Mr. Couriel that anyone trying to gain access would need some type of code.

Town Attorney Abbott said that he was in no better position to interpret the meaning but traditionally pool fences and especially the requirement for self-locking mechanisms are designed to prevent children from a hazard.

Mr. Couriel asked the town attorney if there was any liability to the Town for lowering the height of the fence from 5 feet to 4 feet in the event there was an accident.

Town Attorney Abbott said that he was confident in telling Mr. Couriel that the Town enjoys sovereign immunity for making decisions like this on variances. However, conceivably the landowner could be sued and potentially held responsible if his property is not kept in a reasonably safe condition. Attorney Abbott stated that no legal action or no tort action against the Town would be successful.

Mr. Couriel said that since the fence would be in front of the house, he would like a commitment that the fence would be covered and not seen. Mr. Couriel said that one of the things he would like to accomplish during his short term on the Board, would be to try and beautify the Town and correct the legally non-conforming issues in the Town.

Peggy Mohler came forward to comment that the front of the house was actually the back of the house.

Mr. Crossman asked Town Attorney Abbott if the Board could make suggestions as to the type of fence and the location of the fence without violating any ethics.

Town Attorney Abbott said that the Board could certainly make suggestions; in fact, the Board even had power to recommend conditions as to whether the application should be granted.

Mr. Crossman said that he thought the fence should be 5 feet because of the safety factor and also because it was the Town's Code requirement. Mr. Crossman referred to a small section where the fence would be visible and wanted to know what type of fence would be put there.

Mr. Silverstone said that fence would either be wooden or plastic and assured Mr. Crossman that whatever the material the fence would be it would be pleasing to look at.

Mr. Crossman suggested that he would rather see something other than wood in that location and said that the rest of the area did not matter. Mr. Crossman said that if the fence was put inside the palm hedge, he thought it would be difficult to keep the hedge trimmed.

Mr. Silverstone said that if it was a 4 foot fence, it would not be as difficult to maintain the hedge.

Mr. Crossman said that it was more a safety issue for him and recommended that the fence be 5 feet in height, that the fence be put inside the hedge and that the fence should be made of some material other than wood.

Chairman Carr referred to the location of Mr. Silverstone's property and said that across the Miramar Avenue side there were staggered Eureka Palms and the West Tradewinds side was the front of the house based on the front entrance even though they have a Miramar address. This in essence is their side yard facing Miramar Avenue and felt the logical way to put in fencing would be on their side of the Eureka Palms or inside the patio area.

Mr. Crossman said that if the fence was put inside the Eureka Palm hedge then you would not have to worry about the growth of the hedge and it could be trimmed from the outside which would be much easier.

Mr. Couriel asked Mr. Silverstone how far the fence would be from the deck and how much would the fence encroach.

Mr. Silverstone said that basically the property line was approximately where the bushes were.

Chairman Carr said that if the fence would be on the inside of the Eureka Palms closest to the house, in essence the fence would be away from the property line and would not be theoretically encroaching on anything and it would minimize the encroachment.

Mr. Silverstone said that it was the objective to put in the fence so that it would not be seen from the street or from the pool deck.

Chairman Carr clarified that Mr. Silverstone did not want the fence to be on the outside on the Miramar side or street side and that Mr. Silverstone wanted to weave the fence wherever possible. Chairman Carr thought it was a lot of trouble to do that but he did not have a problem with it.

Mr. Couriel said that he was confused because it said that no fences or walls shall be constructed within 25 feet of the front property line or within ten feet of any public right-of-way on residential lots and that the variance request was to put a fence 23 feet from the property line. Mr. Couriel asked what side the 23 feet was from.

Mr. Silverstone responded that it was on the Miramar side and that the 23 feet put you right in between the bushes.

Mr. Couriel asked Mr. Silverstone if he went 25 feet from the property line where would that put the fence.

Mr. Silverstone replied that the 25 feet would put the fence on the inside of the bushes.

Mr. Couriel said that there would be space in between the deck and the bushes and asked why the fence could not be put on the inside of the bushes.

Mr. Silverstone said that the bushes were staggered and not a straight line.

Mr. Couriel said that he understood that but did not understand why the fence had to be 23 feet instead of 25 feet from the property line.

Mr. Silverstone said that if the fence was put at 25 feet, you would lose the esthetic impact of the landscaping. Mr. Silverstone said that the fence would accomplish the safety factor and would not be obtrusive if the fence was put within the bushes.

Mr. Couriel asked why they just did not put in some type of railing fence.

Peggy Mohler said that she had a small dog and needed a fence that would keep the dog in the yard.

Mr. Couriel said that he had a problem with lowering the height of the fence from 5 feet to 4 feet.

Mr. Silverstone again repeated that the Broward County Code required a 4 foot fence and did not understand why the Town's Code was 5 feet. Mr. Silverstone said there would be less impact with a smaller fence and that one of the main concerns was that the fence be esthetically pleasing. However, Mr. Silverstone said that they were flexible and they would do whatever the Board recommended.

Mr. Couriel said that he thought wooden fences were horrible and strongly suggested that Mr. Silverstone put in some type of plastic fence.

Mr. Silverstone said again it was there intent to keep the children out and the dog in and to keep the impact of the fence as low as possible.

Chairman Carr said that the backup material provided to the Board did not reflect a recommendation from Staff and asked if that statement was true.

Acting Director of Development Services Jeff Bowman came forward and said that staff did not have a recommendation for the variance request. However, he advised the Board that this is something that the applicant has to do by ordinance. Mr. Bowman said that pool was permitted back in the year 2000 legally and was now non-conforming when this code was adopted in the year 2003. Mr. Bowman said that now all pools have to be enclosed and this pool was not noticed until recently because of all of the landscaping around it. Mr. Bowman also said that there was a pending Code Enforcement case on the property and it was imperative that the property get approval both from the Board and the Town Commission or the pool would have to be removed.

Chairman Carr said that Board reviewed a variance back in June of 2008 that involved a fence that did encroach and at that time the previous Development Services Director Frank Rabinowitz said that there was going to be a workshop possibly in September to review these issues.

Mr. Bowman said that the pool that Chairman Carr was referring to was approved by the Town Commission and that the property owner had the same issue in that the pool was constructed in the front setback.

Chairman Carr said that there were suppose to be a lot of issues covered regarding location of pools, location of fences, and height of fences.

Mr. Bowman said that right now pools are not permitted to be constructed in the front setback. However, prior to 2003 there were no requirements and a pool could be put in the front yard, side yard and rear yard. Mr. Bowman said that pools put in the front yard prior to 2003 became non-conforming.

Mr. Crossman said that the boundary of the public right-of-way and the property line seemed to coincide and asked Mr. Bowman if that was correct.

Mr. Bowman referred to the front yard and said that the code states that the shorter of the two fronting the right-of-way would be considered the front. Even though Mr. Silverstone's house front faces West Tradewinds, the shorter of the two is on Miramar Avenue and would be considered his front yard. Mr. Bowman said that Mr. Silverstone's front yard property line does not start until about 15 feet from the roadway – so you have 15 feet of right-of-way. So, Mr. Silverstone is asking for a setback from the property line that would increase the 15 feet from the roadway. Mr. Bowman clarified that there were two different codes involved. One code states that you have to be 10 feet from the property line if you abut a right-of-way; another code states that you cannot construct anything in the front 25 feet. Mr. Bowman said this variance request was the same scenario as the property that is on Codrington that the Board previously approved. Mr. Bowman said that technically Mr. Silverstone's pool was in the front set-back and the only way to put up a fence would be in the front set-back and that was why Mr. Silverstone was asking for a variance.

Mr. Crossman said that he might have a disagreement with the location of the fence and the height of the fence and the Board would have to decide on that before a vote could be made.

Chairman Carr asked if anyone had an objection to granting the variance to be at the designed area indicated by Mr. Silverstone having the fence in the existing Eureka Palm hedge.

Town Attorney Abbott asked Chairman Carr to confirm that no other speakers were present to be heard so that the Board could continue their deliberation.

Chairman Carr confirmed that there were no public comments to be heard and continued the Board's discussion regarding the location of the fence. Chairman Carr repeated that this is an existing pool/spa that did not require a fence enclosure in 2000. Chairman Carr said that the fence would be placed within or behind the palm hedge. Chairman Carr said that if the Applicant put the fence within the hedge, the hedge would be on the property and not in the right-of-way.

Mr. Couriel asked Mr. Bowman if the fence could be placed within 25 feet in lieu of 23 feet so there would be no conflict.

Mr. Bowman said that if Mr. Couriel was asking the Applicant to put the fence at 25 feet that would be at the property line which would be closest to the street not to the house or the deck.

Mr. Crossman clarified with Mr. Bowman that if the fence was put on the property line there would be a 25 foot encroachment. However, if the fence was put closer to the house it would be less of an encroachment.

Mr. Couriel said he was confused and asked Mr. Bowman to point out the property lines on the site plan provided in his packet.

Mr. Bowman said that the Applicant was asking for a 2 foot setback from the bold line indicated on the site plan.

Chairman Carr confirmed with Mr. Bowman that the bold line on the site plan was close to where the Eureka Palm hedge was located at that time.

Mr. Couriel said if the fence was within 10 feet the fence would be closer to the jacuzzi but not on the deck.

Mr. Bowman said that the deck was setback 13.9 feet.

Mr. Couriel felt that there was plenty of room left and felt that the fence did not have to go further than it needed to.

Chairman Carr stated that the Applicant would not be able to maintain his lawn and said that a fence had not been there for almost ten years with a pool, why not let the Applicant put the fence up behind the Eureka Palms since the Town now insists on a fence enclosure.

Mr. Crossman suggested that the fence be placed far enough in behind the hedge so that all of the shrubbery could be maintained. Mr. Crossman said that there still would be plenty of clearance for the pool deck.

Peggy Mohler asked Mr. Crossman if he meant that the fence be put inside the landscaping so that she would be looking at a fence while sitting out on the decking. Ms Mohler said there was a variance approved a short time ago based on the same circumstances.

Chairman Carr said that the other variance was different in that it was an existing situation and they did not have to abide by the Lauderdale-By-The-Sea rules whereas this fence was not required before and now it is required.

Ms Mohler said that the house was granted to have a spa not a pool back in 2000 and now the Board is suggesting that the fence be placed inside the landscaping. Ms Mohler said that if that were the case, she would just tear down the landscaping.

Mr. Crossman commented that there was only a difference of 2 feet.

Mr. Couriel made a motion that the fence be installed within 10 feet of the right-of-way, that the fence be 4 feet high, and that the fence be a material other than wood. Mr. Couriel's motion failed for a lack of second.

Mr. Crossman made a motion that the fence be moved 2 feet from where it was proposed, that the fence be put inside the hedge, that the fence should be 5 feet in height, and that the fence be a material other than wood.

Board Secretary Colleen Tyrrell asked Mr. Crossman to clarify the portion of his motion that pertained to the setback location for the fence.

Mr. Bowman interjected that Mr. Crossman was requesting a 4 foot set-back from the property line.

Mr. Crossman clarified the motion to approve the variance based on the conditions that the fence have a 4 foot setback from the property line, that the fence be put inside the hedge, that the fence should be 5 feet in height, and that the fence be a material other than wood.

The motion was seconded by Mr. Couriel. In a roll call vote, the motion carried 2-1.

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| A. | Project:   | To enclose an existing legally nonconforming swimming pool.   |
|    | Applicant: | El Mar Place Developers LLC, Property Owner, and Representative Peter Debs  |
|    | Location:  | 4329 El Mar Drive   |
|    | Request:   | Description of Variance request: <b><u>The property owners are seeking a Variance from the provision of the Ordinance 2008-03; Section 30-313(4) to allow a fence to be constructed within 25 feet of the front property line (5 feet encroachment) to meet Section 30-313(29) requirements, to enclose the existing legally nonconforming swimming pool.</u></b> |

Chairman Carr asked the Applicant to come forward to present their request.

Representative for the Applicant, Architect Raymond Balassiano explained that the current 4 foot fence was there prior to the developer buying the property. Mr. Balassiano said that the current fence was 20 feet from the property line and they wanted to replace the current fence with a 5 foot fence and move the fence to 25 feet from the property line which is required by the current code.

Chairman Carr stated that the existing fence had been there for years and that the Applicant wanted to replace the 4 foot fence with a 5 foot fence in the existing area.

Mr. Couriel verified with Mr. Balassiano that the plans provided in the backup material for the Board indicates that the fence will now surround the pool which is not currently enclosed.

Mr. Balassiano said that the pool would be enclosed with 5 foot aluminum white picket fence.

Chairman Carr asked if there were any comments from the public or from the Town Staff.

Acting Director of Development Services Jeff Bowman said that the pool was built and fences were not required at that time. Mr. Bowman said that fences are now required and the Applicant has to have the variance to enclose the swimming pool. Mr. Bowman said that the fence that was currently there was in the front 25 foot setback and the Applicant is just proposing to replace the fence that would meet the current code requirements.

Mr. Couriel verified with Mr. Bowman that if the property was ever redeveloped, the property would have to conform to the current code.

Mr. Couriel made a motion to approve the variance as requested to allow a 5 foot high fence within 25 feet of the front property line to meet current code requirement and to enclose the existing legally nonconforming swimming pool.

The motion was seconded by Chairman Carr. In a roll call vote, all voted in favor of the motion. The motion carried 3-0.

- C. Project: To allow the existing shed, constructed without permit, to be relocated within the Right-of-way;  
 To allow a proposed swimming pool to be constructed within the Seaward public Right-of-way;  
 To allow the required swimming pool enclosure (fence) to be located within the corner yard along the property line. **As requested by the Applicant, this item will be cancelled at the August 20, 2008 BOA meeting.**

Applicant:

Karen A. D'Uva

Location:

1658 West Terra Mar Drive

Request: Description of Variance request: **The property owner is seeking three (3) Variances:**

1. **From the provision of the Section 30-211(5) and Section 30-313(31) to allow the existing illegal shed, which was constructed without permit, to be relocated and placed 5 feet and 2 inches from the ROW, rather than 15 feet as required by Code.**
2. **From the provision of Section 30-313(29) (b) to allow a proposed swimming pool to be constructed 3 feet and 1.5 inches from the Seaward public right-of-way (ROW), rather than 10 feet as required by the Code.**
3. **From the provision of the Ordinance 2008-03; Section 30-313 (4) (e), to allow the required swimming pool enclosure (fence) to be located within the corner yard, along the property line, rather than 10 feet from the public right-of-way as required by Code.**

Town Staff Kami Parker advised that Ms DuVa requested that this item be cancelled from the agenda and because it was advertised, it had to brought before the hearing.

**VI. UPDATES/BOARD MEMBER CONCERNS**

There were no Board updates or Board Member concerns.

**VII. ADJOURNMENT**

Having nothing further to discuss, Chairman Carr adjourned the meeting at 12:05 P.M. August 20, 2008.

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Thomas Carr, Chairman

ATTEST:

Date Accepted: \_\_\_\_\_

Colleen Tyrrell, Board Secretary

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